

1 **UNITED STATES DISTRICT COURT**
2 **SOUTHERN DISTRICT OF FLORIDA**

3
4 Matthew McDermott,

Case No:

5 Plaintiff,

6 v.

7
8 EVTV Miami Inc.,

9 Defendant.

10 _____ /

11
12 **COMPLAINT**

13 Plaintiff Matthew McDermott (“*Plaintiff*”), by and through his undersigned
14 counsel, for his Complaint against Defendant EVTV Miami Inc. (“*Defendant*”)
15 states and alleges as follows:
16

17 **INTRODUCTION**

- 18
- 19 1. This action seeks to recover damages for copyright infringement.
 - 20 2. Plaintiff herein creates photographic images and owns the rights to
21 these images which Plaintiff licenses for various uses including online and print
22 publications.
23
 - 24 3. Defendant owns and operates a website known as evtv.online (the
25 “*Website*”).
26
 - 27 4. Defendant, without permission or authorization from Plaintiff
28

1 actively copied, stored, and/or displayed Plaintiff's Photograph on the Website
2 and engaged in this misconduct knowingly and in violation of the United States
3 copyright laws.
4

5 **PARTIES**

6 5. Plaintiff Matthew McDermott is an individual who is a citizen of the
7 State of New York and maintains a principal place of business 23-38 33rd Street,
8 Astoria in Queens County, New York.
9

10 6. Upon information and belief, Defendant EVTV Miami Inc., is a
11 Florida Corporation with a principal place of business at 7620 Northwest 25th
12 Street, Suite 5, Miami in Miami-Dade County, Florida and is liable and
13 responsible to Plaintiff based on the facts herein alleged.
14

15 **JURISDICTION AND VENUE**

16 7. This Court has subject matter jurisdiction over the federal copyright
17 infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.
18

19 8. This Court has personal jurisdiction over EVTV Miami Inc. because
20 it maintains its principal place of business in Florida.
21

22 9. Venue is proper under 28 U.S.C. §1391(a)(2) because EVTV Miami
23 Inc. does business in this Judicial District and/or because a substantial part of the
24 events or omissions giving rise to the claim occurred in this Judicial District.
25
26
27
28

FACTS COMMON TO ALL CLAIMS

10. Plaintiff is a professional photographer by trade who is the legal and rightful owners of photographs which Plaintiff licenses to online and print publications.

11. Plaintiff has invested significant time and money in building Plaintiff's photograph portfolio.

12. Plaintiff has obtained active and valid copyright registrations from the United States Copyright Office (the “USCO”) which cover many of Plaintiff's photographs while many others are the subject of pending copyright applications.

13. Plaintiff's photographs are original, creative works in which Plaintiff's own protectable copyright interests.

14. EVTV Miami Inc. is the registered owner of the Website and is responsible for its content.

15. EVTV Miami Inc. is the operator of the Website and is responsible for its content.

16. The Website is a popular and lucrative commercial enterprise.

17. The Website is monetized in that it contains paid advertisements and, Upon information and belief, Defendant profits from these activities.

18. On December 14, 2021, Plaintiff authored a photograph of Keechant Sewell in front of the Brooklyn Bridge (the “*Photograph*”). A copy of the

1 Photograph is attached hereto as Exhibit 1.

2 19. Plaintiff applied to the USCO to register the Photograph on or about
3
4 January 15, 2022 under Application No. 1-11112023319.

5 20. The Photograph was registered by the USCO on January 15, 2022
6
7 under Registration No. VA 2-284-583.

8 21. On December 15, 2021 Plaintiff first observed the Photograph on the
9
10 Website in a story dated December 15, 2021. A copy of the screengrab of the
11 Website including the Photograph is attached hereto as Exhibit 2.

12 22. The Photograph was displayed at URL: [https://evtv.online/por-](https://evtv.online/por-primera-vez-una-mujer-dirigira-la-policia-nueva-york/)
13 [primera-vez-una-mujer-dirigira-la-policia-nueva-york/](https://evtv.online/por-primera-vez-una-mujer-dirigira-la-policia-nueva-york/).

14 23. The Photograph was stored at URL: [https://evtv.online/wp-](https://evtv.online/wp-content/uploads/2021/12/keechant-sewell-519-960x640.jpg)
15 [content/uploads/2021/12/keechant-sewell-519-960x640.jpg](https://evtv.online/wp-content/uploads/2021/12/keechant-sewell-519-960x640.jpg).

16
17 24. Without permission or authorization from Plaintiff, Defendant
18
19 volitionally selected, copied, stored and/or displayed Plaintiff copyright protected
20 Photograph as is set forth in Exhibit “1” on the Website.

21 25. Upon information and belief, the Photograph was copied, stored and
22
23 displayed without license or permission, thereby infringing on Plaintiff's
24 copyrights (hereinafter the “*Infringement*”).

25 26. The Infringement includes a URL (“*Uniform Resource Locator*”) for
26
27 a fixed tangible medium of expression that was sufficiently permanent or stable
28

1 to permit it to be communicated for a period of more than transitory duration and
2 therefore constitutes a specific infringement. *17 U.S.C. §106(5); Perfect 10, Inc.*
3
4 *v. Amazon.com, Inc.*, 508 F.3d 1146, 1160 (9th Cir. 2007).

5 27. The Infringement is an exact copy of the entirety of Plaintiff's
6 original image that was directly copied and stored by Defendant on the Website.

7
8 28. Upon information and belief, Defendant takes an active and
9 pervasive role in the content posted on its Website, including, but not limited to
10 copying, posting, selecting, commenting on and/or displaying images including
11 but not limited to Plaintiff's Photograph.

12
13 29. Upon information and belief, the Photograph was willfully and
14 volitionally posted to the Website by Defendant.

15
16 30. Upon information and belief, Defendant is not registered with the
17 United States Copyright Office pursuant to 17 U.S.C. §512.

18
19 31. Upon information and belief, Defendant engaged in the Infringement
20 knowingly and in violation of applicable United States Copyright Laws.

21
22 32. Upon information and belief, Defendant has the legal right and
23 ability to control and limit the infringing activities on its Website and exercised
24 and/or had the right and ability to exercise such right.

25
26 33. Upon information and belief, Defendant monitors the content on its
27 Website.

28

1 34. Upon information and belief, Defendant has received a financial
2 benefit directly attributable to the Infringement.

3
4 35. Upon information and belief, the Infringement increased traffic to
5 the Website and, in turn, caused Defendant to realize an increase in its advertising
6 revenues.

7
8 36. Upon information and belief, a large number of people have viewed
9 the unlawful copies of the Photograph on the Website.

10 37. Upon information and belief, Defendant at all times had the ability
11 to stop the reproduction and display of Plaintiff's copyrighted material.

12
13 38. Defendant's use of the Photograph, if widespread, would harm
14 Plaintiff's potential market for the Photograph.

15
16 39. As a result of Defendant's misconduct, Plaintiff has been
17 substantially harmed.

18
19 **FIRST COUNT**
20 *(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)*

21 40. Plaintiff repeats and incorporates by reference the allegations
22 contained in the preceding paragraphs, as though set forth in full herein.

23 41. The Photograph is an original, creative work in which Plaintiff owns
24 valid copyright properly registered with the United States Copyright Office.

25
26 42. Plaintiff has not licensed Defendant the right to use the Photograph
27 in any manner, nor has Plaintiff assigned any of its exclusive rights in the
28

1 copyrights to Defendant.

2 43. Without permission or authorization from Plaintiff and in willful
3 violation of Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and
4 illegally copied, stored, reproduced, distributed, adapted, and/or publicly
5 displayed works copyrighted by Plaintiff thereby violating one of Plaintiff's
6 exclusive rights in its copyrights.
7

8 44. Defendant's reproduction of the Photograph and display of the
9 Photograph constitutes willful copyright infringement. *Feist Publications, Inc. v.*
10 *Rural Telephone Service Co., Inc.*, 499 U.S. 340, 361 (1991).
11

12 45. Plaintiff is informed and believes and thereon alleges that the
13 Defendant willfully infringed upon Plaintiff's copyrighted Photograph in violation
14 of Title 17 of the U.S. Code, in that they used, published, communicated, posted,
15 publicized, and otherwise held out to the public for commercial benefit, the
16 original and unique Photograph of the Plaintiff without Plaintiff's consent or
17 authority, by using it in the infringing article on the Website.
18

19 46. As a result of Defendant's violations of Title 17 of the U.S. Code,
20 Plaintiff is entitled to an award of actual damages and disgorgement of all of
21 Defendant's profits attributable to the infringement as provided by 17 U.S.C. §
22 504 in an amount to be proven or, in the alternative, at Plaintiff's election, an
23 award for statutory damages against Defendant for the infringement pursuant to
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1 17 U.S.C. § 504(c).

2 47. As a result of the Defendant's violations of Title 17 of the U.S. Code,
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4 the court in its discretion may allow the recovery of full costs as well as reasonable
5 attorney's fees and costs pursuant to 17 U.S.C. § 505 from Defendant.

6 48. As a result of Defendant's violations of Title 17 of the U.S. Code,
7
8 Plaintiff is entitled to injunctive relief to prevent or restrain infringement of his
9 copyright pursuant to 17 U.S.C. § 502.

10 **JURY DEMAND**

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12 49. Plaintiff hereby demands a trial of this action by jury.

13 **PRAYER FOR RELIEF**

14 **WHEREFORE** Plaintiff respectfully requests judgment as follows:

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16 That the Court enters a judgment finding that Defendant has infringed upon
17 Plaintiff's rights to the Photograph in violation of 17 U.S.C. §501 et seq. and
18 award damages and monetary relief as follows:

- 19
20 a. finding that Defendant infringed upon Plaintiff's copyright
21 interest in the Photograph by copying and displaying without
22 a license or consent;
23
24 b. for an award of actual damages and disgorgement of all of
25 Defendant's profits attributable to the infringement as
26 provided by 17 U.S.C. § 504 in an amount to be proven or, in
27
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1 the alternative, at Plaintiff's election, an award for statutory
2 damages against Defendant for the infringement pursuant to
3 17 U.S.C. § 504(c), whichever is larger;
4

- 5 c. for an order pursuant to 17 U.S.C. § 502(a) enjoining
6 Defendant from any infringing use of any of Plaintiff's works;
7
8 d. for costs of litigation and reasonable attorney's fees against
9 Defendant pursuant to 17 U.S.C. § 505;
10
11 e. for pre judgment interest as permitted by law; and
12
13 f. for any other relief the Court deems just and proper.

14 DATED: June 7, 2022

15 **SANDERS LAW GROUP**

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